Poweshiek County / P.P.M.E. Local 2003 (Sheriff)

2002-2003
CEO 1106
SECTOR 2

BEFORE THE FACT FINDER

In the Matter of the Request for Mediation filed by

PUBLIC PROFESSIONAL AND MAINTENANCE EMPLOYEES LOCAL UNION 2003, I.U.P.A.T.

involving certain employees in the employ of

POWESHIEK COUNTY (SHERIFF'S DEPARTMENT)

Appearances:

Deborah A. Groene, Business Representative, appearing on behalf of the Unoin.

Lou Herrera, Attorney at Law, appearing on behalf of the Employer.

FACT FINDING AWARD

Public Professional and Maintenance Employees Local Union 2003, I.U.P.A.T. (herein referred to as the "Union;" and Poweshiek County (Sheriff's Department) herein referred to as the Employer, having jointly selected the Undersigned from a panel of Fact Finders provided by the Iowa Public Employment Relations Board to hear and give recommendations in the dispute specified below; and the Undersigned having held a hearing in Montezuma, Iowa, on April 3, 2003; and each party having made its argument with the presentation of its case and the parties having filed briefs with respect to the FMLA issue which was received on April 11, 2003[1].

ISSUES

This is the parties' first collective bargaining agreement. The parties' final offers form the issues in dispute. I state them as follows:

1. Article 13- Hours of Work

A. The parties are in agreement with most of the provision. The Union proposes to include the following sentences:

"The purpose of this Article is intended to define the normal hours of work. This Article will not

[1]The parties agreed to extend the statutory deadlines for the completion of bargaining.

be construed as a guarantee of the hours of work per day or the days of work per week.

* * *

The parties agree that the above reflects the normal workday and work schedule. During certain periods, such as staff shortages, this schedule may change so as to adequately supply law enforcement and operate the Department efficiently."

The Employer proposes to include the following sentences in lieu of those proposed by the Union:

"The purpose of this Article is not (sic) be construed as a guarantee of the hours of work or pay per day or hours or work or pay per week. Determination of daily and weekly hours of work shall be determined by the Employer.

B. The parties are also in disagreement about whether overtime earned should be paid or should be strictly compensatory time off. The Employer proposes that overtime be taken solely as compensatory time off and that employees "may accumulate and carry over 80 hours of compensatory time." The Employer's proposal also requires that the employee receive only compensatory time off for training and mandatory meetings.

The Union proposes employees be paid for overtime, either in cash or compensatory time off, at the employee's election. The Union also proposes that "An employee may accumulate and carry over up to 80 hours of compensatory time. Once an employee reaches 80 hours of compensatory time, overtime will be paid at the rate of time and one-half (1 1/2) of the employee's regular hourly rate.

Upon separation of employment, the employee will be paid for his unused accumulated compensation time at the employee's current rate of pay.

Training and Mandatory Meeting. The Union proposes that employees may elect to receive either cash payment or compensatory time at time and one-half for meetings outside their normal hours. The Employer proposes to give them compensatory time only at time and one-half.

2. Article 14-Insurance:

A. In July, 2002, the Employer unilaterally required employees to pay $50 per month toward the single plan premium (previously they were not required to make a contribution) and required employees electing the family plan to pay an additional $50 per month of their health insurance plan premium. Previously, they contributed $200 per month to the family plan. The Employer proposes to keep the July 1, 2002, increases in employee contribution and require that if there is any change in the premium-equivalent, that the Employer and employees evenly share the increased cost. The Union proposes to roll back the employee contribution to health insurance premiums which the Employer unilaterally implemented July 1, 2002. The Union opposes any

further increase in employee contribution to the premium equivalent.

B. The Employer also increased the deductibles which employees pay under the health insurance plan effective July 1, 2002. The Employer proposes to keep the changes and the Union proposes to eliminate them.

C. The Union proposes to add a requirement that employees who are entitled to be reimbursed by the health insurance administrator shall receive the reimbursement within 14 days. The Employer opposes this. There is no current policy on the subject.

D. The parties disagree as to the standards for changing the terms of the policy or the "carrier." The Employer proposes that insurance be as per County Board policy.

E. Currently, there is a life insurance benefit of $20,000 life, and $50,000 accidental death benefit. The Union proposes to include it into the contract. The Employer proposes to keep the life insurance benefit as "per current Board Policy."

3. Article 16-Holidays

The Union proposes to pay employees in cash or compensatory time off, at time and one-half for all hours worked on a holiday. The Employer proposes to grant only compensatory time at time and one-half for all hours worked on a holiday. The practice prior to July 1, 2002, was as the Union proposed. The Employer adopted its position effective July 1, 2002.

4. Article 17 - Sick Leave.

A. Wellness Benefit. Prior to July 1, 2002, unit employees who accumulated the maximum allowable health insurance were allowed to accumulate 1 day per month more up to 12 days. They were paid for 1/2 of the extra accumulated sick leave at the end of the fiscal year. The Union concedes that the subject of a paid wellness benefit is a permissive subject of bargaining. In lieu, it proposes that an employee who does not use sick leave during a calendar month shall earn 4 hours of vacation for that month. [This is from the first day and does not start after the cap is reached.] The Employer opposes this proposal.

B. The Employer proposes that an employee be required by the terms of the collective bargaining agreement to use accrued compensatory time, sick leave or vacation as part of the employee's 12 week family leave under the FMLA. The Union opposes this.

5. Article 22 - Job Classification and Straight Time Hourly Wage Rates

The Union proposes to add the following language to Article 22: "Reference is made here to Exhibit A. "Reference is made here to Exhibit A. Job Classifications and Salary Schedule. By this reference, said Exhibit becomes a part of this Agreement.

"Employees shall be paid every two weeks and shall have the option of having their paychecks deposited directly into a designated bank account. Employees are responsible for providing the Auditor with routing information as requested."

The Employer has not proposed language which is comparable. Employees here are paid every 2 weeks and the Employer agrees to bi-weekly pay periods. The Employer opposes direct deposit. The Employer does not object to incorporating the wage schedule into the Agreement.

6. Exhibit A

a. Deputies Paid as Percentage of the Sheriff

1 year	75% of Sheriff's salary
2 years	80% of Sheriff's salary
3 years	85% of Sheriff's salary

b. Dispatcher/Jailers

	7/1/02	7/1/03 (4% increase)
New Hire	$9.50	9.88
6 months	10.00	10.40
1 Year	10.50	10.92
18 months	11.00	11.44
2 years	50%	12.22
(of Sheriff's wage of $11.75)		

c. Custodian: The Union proposes a 4% increase effective July 1, 2003.

The Employer proposes a 2% increase for custodian and 2% for all ranges of dispatcher/jailer. It proposes that the percentage relationship with the Sheriff's wage rate be eliminated.

d. Additional amount to be paid to the Jail Administrator. Currently this deputy gets $100 per month for performing this task. The Union proposes 5% of his monthly wage and the Employer proposes eliminating this task rate.

FINDINGS OF FACT

The Fact Finder has no authority to make a final decision for the parties. It is his responsibility to make recommendations as to each impasse item which may incorporate either party's final offer or any compromise between the positions. The standards for making this decision are not specified in the Iowa Code, but I adopt the same standards by which interest arbitrators make their decision. See. 20.22(9), Iowa Code.

The Union was certified on September 19, 2002, to represent employees in the Sheriff's Department. Negotiations started shortly after November 8. There are 15 employees in the bargaining unit. There are 7 deputies (including one performing the jail administrator task), 1 custodian and 7 dispatcher/jailers. The dispatcher and jail function is combined in 1 position.

The County is a small county. It is largely rural with one recreational lake. One of its larger institutions in Grinnel College. The college does not pay real estate taxes in the county, but it does bring in substantial revenue to the local economy. It has 650 employees. Other industries include Donaldson, H &W Brand, United McGill, Golden Sun Feeds, Grinnel Beverage, Grinnel Mutual Reinsurance Company, Monsanto, Freemont Farms, Wenco, Door Craft, Montezuma Manufacturing, Iowa Telecom (headquarters), Verizon (headquarters), Sig Manufacturing, and Martin-Marietta.

The work Deputies perform here is somewhat different than that performed by deputies in surrounding counties. Sheriff's deputies are often on patrol alone. The county has Interstate 80 which is one of the busiest highways in the U.S. It also has many miles of major highways. Deputies here must deal with interstate travelers. The Union offered testimony that sheriff deputies and other police are often paid more in places which provide police services for college areas. Deputies also have to act as investigators because other counties have deputies assigned as investigators. All deputies have to serve process. The County has fewer deputies per mile of highway than most similar counties.

1. COMPARABILITY

The Union proposes to use the first tier of contiguous counties for its external comparison group All of these counties have sheriff's departments and all are organized except Keokuk and Mahaska. In its view, while there are some differences in the size of some counties, all share essentially the same labor market and economic circumstances. The Employer has selected all counties in Iowa with population between 15,000 and 25,000 as comparables. Most of the surrounding counties have characteristics similar to those of this county. There are several larger counties in the group proposed by the Union. I am satisfied that the group proposed by the Union is adequate with respect to the issues involved in this hearing. I note that since some of the Union's proposed comparisons include much larger counties, I have not necessarily relied upon averages in the comparison group but, rather, given heavier weight to the counties which share a closer identity of relevant characteristics with those of this county.

2. ABILITY TO PAY

Positions of the Parties

The Employer takes the position that it has difficulty in paying for the Union's proposal. The ending fund balance of the general fund has declined from FY01 of $865,621 to $501,460. The state recommends that the Employer have 25% of its general fund in its ending balance

because there are no revenues in the period of July through September. There were significant problems with the Employer's budget in the year ending July 1, 2001, which resulted in the Employer taking action to reduce its expenditures. One of the actions which the County Board was forced to make was to cover the health insurance plan for unexpected losses. Specifically, the Employer made a loan to the health plan from the General Basic Fund in FY01 for $150,000. The Employer borrowed $100,000 from a local bank in FY02 to fund the health plan. Even with the changes the Employer made to the health plan effective July, 2002, the Employer is still funding the family health plan by $200 per month per employee less than is necessary to cover expected expenses.

The Employer has also argued that its overall costs in many programs have risen far more than its revenues. Additionally, its tax rates are beyond the level which citizens are willing to tolerate. It notes that a concerned citizens group filed a protest of the Employer's budget in March, 2003. The Employer has responded by making every conceivable reduction in expenses other than those relating to employees. For example, it reduced its own expenditures by $32,000. The total savings were about $202,000. However, the Employer's general liability and workers' compensation costs alone will increase by a minimum of 25%. The health insurance will increase by 25% to 30% over what the Employer is paying now. The Employer's budget did not even consider this increase. As of March 23, 2003, the General Basic Ending Fund balance was about $29,721. The result is that even after the property asking increase of $461,664, they will not have the 25% they should have in their ending balance to meet July through September expenses. At this time, the Employer does not know the concerned citizens's budget appeal will turn out. Therefore, the Employer does not know what type of budget it will have. The citizens who filed that petition were unequivocally opposed to a 2% increase for employees and insisted that County Board members cut services rather than increase taxes. Each board member indicated that services were reduced to the lowest possible level. The Employer, therefore, notes that while it has not adopted every conceivable tax to every conceivable maximum, it has substantially raised taxes to the point that further tax increases are not warranted.

The Union has indicated that the Employer has not taken advantage of all of the revenue and spending authority opportunities that it has. It would note, for instance that many counties with a college have enacted a supplemental sales tax. It also argues that the Employer has the opportunity to increase the hotel/motel tax.

Discussion

The stated motivation for the Employer's actions in July, 2002, was it financial difficulties. The evidence does indicate that the County Board had viewed the tax burden on taxpayers in the County as being as heavy as the taxpayers are willing to bear. Rather than substantially raise taxes to the highest levels allowed by law, it has cut some services in other departmetns, and allowed its ending balance to fall. The documentary evidence which the Employer presented shows the following primary causes; a) increases in the cost of secondary road maintenance and equipment operation, b) health insurance funding, c) a 25% increase in general liability and

workers' compensation insurance premiums, and d) a dramatic increase in youth services expenses. There is also an indication that there have been large increases in mental heath costs and county environment costs, but these were not explained.

The County Board has made a broad array of changes to deal with its financial situation. It eliminated four positions outside of the bargaining unit and made substantial budget cuts across many departments. In the Sheriff's department, it reduced the jail administration budget from $100,000 to $50,000, eliminated overtime payments, and eliminated the $75,000 estimated for vehicle replacement as per the normal schedule.

The Employer does not argue that it lacks the financial ability to meet the Union's offer. The Union is correct, for example, that the Employer has the legal authority to raise taxes. The Employer's primary sources of revenue are the General Basic Levy and the Rural Basic Levy. If the County taxes to the maximum of those levies, it does have the option of specific supplemental levies. The Employer has not taxed to the maximum level of each of its possible levies. It has adopted some of the supplement levies which it is still allowed to levy. The Employer does not apply funds from the Rural Basic Levy to this unit. The parties disagree as to whether the Employer may do so to the extent that deputies provide services to secondary roads. However, the judgment made by the County Board was that the level of taxation is the highest it reasonably can impose.

Accordingly, the Employer's argument is better viewed as one alleging that it is difficult for it to meet the Union's offer without taking unwarranted actions to cut services, increase taxes or allow its financial condition to deteriorate further. The Employer has met its burden to demonstrate that it is having financial difficulty and it will have difficulty in meeting some of the Union's proposals. The record also establishes that the Employer has what appears to be a temporary need to curtail cash expenditures to improve its financial condition

3. COMPENSATORY TIME

The compensatory time issue is common to the differences the parties have with respect to a number of the provisions of the agreement. I, therefore, address it separately.

Positions of the Parties

The Union takes the position that in all, but one of the counties, employees are given the choice to take cash or compensatory time. In the other county, the employer makes the choice. The compensatory time maximum varies from county to county. The parties are in agreement as to the maximum accumulation of compensatory time here of 80 hours. The parties disagree as to what happens after the employee gets to 80 hours. The parties agree that the Sheriff must approve the use of compensatory time off. Under the FLSA, 52 CFR Sec. 553.23(a)(1), an employer must have an agreement with the employee (which can be a collective bargaining agreement) by which the employee agrees to use compensatory time in lieu of cash. There are no

individual agreements here. The Union does not agree that the employee must take time off at the election of the employer. The Union is of the view, that a neutral should not impose an obligation to do so where it impinges on the right of the individual employees. In a unit of this kind, it is likely that employees will reach the 80 hour maximum very quickly in a year.

The Employer takes the position that it is short of cash and needs to curtail overtime expenditures. It notes that the purpose of the 80 hour limit is to require that employees use the time off as quickly as practical. It notes it wants the employee to use the compensatory time and that is the reason for the limit. The Employer asserts that in FY02, if overtime had been paid it would have cost the Employer $52,000. It does not make sense for its to pay overtime when it is cutting $50,000 out of the budget for jail inmates and making other budget cuts. If the Employer has to pay for this overtime, it will not be able to make the cost savings necessary to operate the Sheriff's department.

Discussion

A party proposing to change an existing benefit is required to show that circumstances have changed such that a modification of the benefit is necessary and that its offer is reasonably necessary to make that change. As an alternative, it may show that it has made an offer of equivalent quid pro quo.

The use of overtime hours is a benefit to both parties and the public. The Employer gains the necessary flexibility to meet its staffing needs as they occur. The concept also allows the Employer to keep its total staff to a reasonable size and to not have to pay or administer a large staff of temporary or part time employees. The employees gain additional income and/or time off. The Union correctly points out that the use of overtime, particularly in police type units, involves serious considerations for the employees in maintaining their family relationships. The Employer must be concerned to maintain the morale and stability of Deputies. In this regard, employees have a vital interest in whether they take pay or compensatory time off for overtime worked. The parties have recognized this by their long standing practice prior to July, 2002, of granting employees the option of either taking compensatory time off or pay, at the employee's option. I find this to be the "current practice." The record also shows that both Deputies and Dispatcher/Jailers have frequent overtime.

The Employer has demonstrated that it is having difficulty to pay and, most importantly, is experiencing a revenue shortage. This is the stated reason for its having changed the practice and for its effort to have that change adopted into the collective bargaining agreement. The Employer has shown that circumstances have changed and some change in the practice is warranted.

The Employer has failed to show that its proposal is necessary to effect that change in that less extreme alternatives exist. The existing practice here is consistent with that in almost every comparable county. First, there is no reason that even under the Employer's theory of this case

that some employees may not be granted pay rather than compensatory time off. The provision proposed by the Employer to restrict employees only to compensatory time off appears to not be totally in its interest in periods of extremely high overtime. Further, the Employer's reason for the proposed change appears temporary. Its financial position may improve. Accordingly, the right of employees to choose between pay or compensatory time should resume at least as soon as the financial situation of the Employer permits. Additionally, it appears very likely in this small bargaining unit that employees who take compensatory time off will have to be replaced by others earning compensatory time off at time and one-half and/or unit employees will frequently be denied the opportunity to take compensatory time off. If the latter occurs, the value of the compensatory time off to the employee will be substantially reduced. Finally, the circumstances which caused the Employer's difficulty to pay were essentially beyond the control of employees in this unit. One factor which would ordinarily be considered in voluntary bargaining is the extent to which the employer offers the employees an incentive to assist it with its financial difficulties. Since the Employer would otherwise either have to raise taxes or borrow money to pay overtime, it would make sense that the Employer would offer employees an incentive to give up the right to choose pay or time off. Both parties have agreed to limit compensatory time to 80 hours and both agree that it is likely that employees could easily accumulate that much compensatory time. The Employer would effectively reduce employee options in using their accumulated compensatory time. The Union's proposal would effectively force the Employer to grant employee requests to use overtime and would not prevent employees from forcing the Employer to pay overtime. Accordingly, I recommend that the parties add the following language to that which they have previously agreed upon in the Hours of Work provision and that recommended in the discussion of "hours" below:

"Employees shall be paid, either in cash or compensatory time, * * * *

Each employee will be asked to indicate his choice of compensation time or overtime pay for compensation credit on his/her time sheet. An employee may accumulate and carry over up to 80 hours of compensatory time. The Sheriff, in his or her discretion, may for any calendar month require that all employees receive only compensatory time for overtime in that month. If the Sheriff does so require, employees will receive additional overtime at the rate of one hour for every twenty credited to their overtime account. Employees who accumulate 80 hours of overtime shall take any compensatory time earned above 80 in by the end of the pay period or within 7 days, which ever is longer. For the purposes of compensatory time earned beyond 80, the Sheriff shall not unreasonably refuse to permit the employee to take any time as requested. Such refusal cannot be based solely upon the fact that the employee's taking the time would result in overtime for other employees. If the employee is denied his or her request to take the compensatory time at his or her option on two occasions during the pay period of 7 days, he or she will be paid at the rate of time and one-half for all such time.

4.. INSURANCE

a. Background

The health insurance plan here is self-funded. The Employer has had difficulty with the health insurance plan. The Employer unilaterally made changes to the health insurance plan effective July 1, 2002. Neither party is proposing to make a further alteration as to these matters. Prior to that time, the employees contributed nothing to the single health insurance premium equivalent and $200 per month to the family premium equivalent. The Employer added a $50 contribution to both effective July 1. The other main changes which were made was that:

1. The prior deductible of $100 per individual and $200 per family, was increased to $200 and $500 respectively.

2. The out of pocket maximum of $500 single and $600 family was increased to $500 single and $1,000 family. However, the deductible was previously not included in the maximum, but is included now.

3. The Employer also made changes to co-insurance, requiring employees to now contribute 10% to, among other things, hospital care, outpatient diagnostic and x-ray, outpatient physician services and hospitalization.

4. It also modified the prescription drug plan requiring certain prescription medication to be paid at 50% instead of 80%.

All, but one, of the employees in the bargaining unit are enrolled in the family plan.

The evidence offered by the Employer indicates that the Employer has had difficulty with the insurance costs. The Employer experienced what was described as a "shock loss" in two prior years. The exact nature of this loss is not clear, but the records suggests this was a one-time loss rather than a continually repeating loss. The Employer loaned the health insurance plan $100,000 in FY01 and $150,000 in FY02. The latter loan, was to be paid by a debt service levy. It is unclear how the former loan was funded, but it may have been simply general use funds. The Employer was faced with the choice of ultimately funding that entire loss by the debt service levy alone, by increasing premiums charged to employees or by reducing benefits. The $100,000 loan was still outstanding as of the date of hearing. The Employer chose to make the changes outlined above to recover the losses and to reduce its costs for health insurance in the future. It used the $50 per month increase in employee contribution as its sole increase in premium equivalents for 2001-2.

The Employer learned shortly before hearing that its proposed premium equivalent will rise by 20%-30% for FY04. The Employer's budget did not provide for this. The record shows that the actual costs of the family plan had remained virtually constant since the 1999-2000 year. Those costs were $316 single and $718 family for 2001-2. The Third Party Administrator recommended a funding level for July 1, 2002, to June 30, 2003, at $495 and $864 including the newly increased employee contribution. Nonetheless, the Employer established its premium equivalents at $493.70 and $674.94 (including employee contributions). Thus, the family

premium equivalent is about $200 less per month than is necessary. This under-funding appears to have been on-going and, thus, appears to have contributed to the Employer's "unexpected" losses. The plan administrator of this plan administers 200 plans and asserted that the changed plan provides one of the highest level of benefits of the plans it administers.

Positions of the Parties

The Union does not know what parts of the Board policy which the Employer wants to include in the agreement. The total amount that the Employer set aside to cover health insurance increases in July, 2002, was $50 per month. In other words, the Employer forced the employees to pick up the full amount of its increased premium equivalent. The Union argues that the Employer has not treated employees equally in that over the last year it has not required employees of the County's Assessor's office to pay the $50 increase. The Union has not made a proposal to roll back the changes which were made to the other policy terms. The Union also notes that the Employer pays a greater dollar amount for the single premium than it does for the family premium ($443.70 (S) and $424.94 (F)). The Union also notes that the Employer has not followed the recommendation of its Third Party Administrator with respect to the premium equivalent for the family plan but essentially has for the single plan. Thus, it argues that the Employer's problems with respect to covering excess expenses is the result of the Employer's own actions and not those of the employees in abusing insurance coverage. 75% of the contiguous counties have a dependent deductible of $200 or less. The Union asks that I return to the deductible that employees previously had especially in light of all of the other changes which the Employer made. The Union also notes that the Employer has told it that it cannot provide the actual or estimated premium equivalents for the next period until May. In its view, this makes it difficult for the Union to negotiate with respect to health insurance. This should be considered by the Fact Finder. Employees should not contribute to the cost of single coverage because that is not typical in the state, particularly in this area. The Union wants the employees at the same maximum that they were at prior to July of 2002. Even at the $200 per month, the employees here would still be paying $86 per month toward dependent health insurance more than any of the contiguous counties. The overall expenditure of the Employer for the total of wages and benefits for dispatcher/jailers and the custodian is significantly less than that in the surrounding counties. Exhibit 13 is the Employer's required report to the State of Iowa with respect to its self-funded health insurance program. This exhibit demonstrates that the Employer represented to the State that its program is funded appropriately. Accordingly, the Employer's argument that it was required to borrow $250,000 to meet health insurance funding obligations is incredible.

The Employer argues that it was required to borrow $250,000 in October of 2001, in order to fund the health insurance plan in prior years. Currently, the Employer is contributing $200 less for the family health insurance than is recommended by the Third Party Administrator. If the Employer were to pay the additional amount, it would have further financial trouble. All but one county of the Union's comparables have employees contribute to the family health insurance.

The Employer learned as of the date of hearing that its health insurance costs will rise between 25

and 30%.

The Employer notes that in its comparability group, there is substantial support for the concept of contribution to the single coverage. The Employer concedes that many counties do not require employee contribution to single coverage.

The Employer also argues that this health insurance plan is one of the better plans which is administered by its third party insurer. It notes that one of the local employers eliminated health insurance entirely. If the Employer is required to go back to the plan form from prior to July 1, 2002, under which it had to borrow to fund the health plan, what will happen? It is doomed for failure. It is trying to make up for it. When you look at the deputies wages, they are well off and can afford the change. It is unfortunate for other unit employees.

The Employer notes that the Union has correctly stated the benefits in the life plan, but the Employer's policy has other restrictions which are not listed. The Employer seeks to maintain those restrictions. The Employer states that it does not have the authority to order the administrator to pay in 14 days. Both parties agree that 30 days is reasonable. The Employer asserts that no comparable county has picked up the full cost of insurance increases.

Discussion

The health insurance issues in this case involve what appear to be efforts by the Employer to shift more of the rising costs of health insurance to employees. Some of these efforts include the adoption of increased deductibles and co-pays. It is possible that some of these may cause some cost savings by giving employees the incentive to be better health insurance consumers. The adoption of at least some contribution to the premium may also serve these ends. There has been no discussion in the record as to the reasons for the specific changes which the Employer made to its health insurance.

The Union has sought a roll-back of two of the changes which the Employer made to the health insurance plan in July, 2002. The first is a change in the increased deductibles. The deductibles established here are higher than all, but Marion and Marshall Counties. There is no evidence as to the level of benefits in the other counties. There is also no evidence as to the total premium paid by other counties. A letter from the Third Party Administrator, the only document on the subject. suggests that the overall plan here is substantially better than elsewhere. The recent rise in recommended monthly premium contribution also suggests that some restraint in the growth of health insurance costs was necessary and that the increased deductibles are a reasonable way of preserving the higher level of benefits in this county.

There are some counties which have employees contribute to the single health insurance plan; however, as a practice it is rare. The available evidence indicates that the modified health insurance plan here is somewhat better than plans elsewhere. There are substantial public policy and sound business reasons to make at least single coverage unquestionably available to public

employees. There is only one employee in this unit who has elected single coverage. The record also shows that the premium equivalents which the Employer established for the single plan over the years has been sufficient to cover the Third Party Administrator's suggested premium equivalent. The Employer's choice to impose a $50 premium contribution in July, 2002, was the entire amount by which the Employer increased the premium equivalent that year. The choice to do that is inconsistent with the tenor of the Employer's position in this matter. It is only seeking 50% of future increases in the premium contribution for the FY04. The amount the Employer has been routinely contributing to the single plan has kept pace with the Third Party Administrator's recommendation for the premium equivalent.

Similarly, the total contribution sought by the Employer of $250 for the family plan is higher than that in all of the comparable counties. Only Harrison and Hamilton Counties in the group offered by the Employer have family contributions as high as those proposed here. The imposition of a $50 increase in July, 2002, was the entire increased amount the Employer contributed to the health plan that year. As stated above, that is inconsistent with the position the Employer has taken now of seeking only 50% of the increase. I note that the Employer has not been setting its premium equivalent with respect to the family plan at the amount equal to the recommendation of the Third Party Administrator. Thus, over the years, the total contribution made to the family plan portion of the health policy has been less than was actuarially required. Accordingly, the recommendation in this case is that the single premium equivalent increase be rolled back entirely and that the family plan increase be rolled back from $50 to $25. Because the increase was excessive in July, 2002, I recommend against the Employer's proposal that employees share any further in the increased premium equivalents.

The Union also sought to require that employees who are going to be reimbursed, be reimbursed within 14 days. It would be impractical to incorporate a requirement to that effect into the collective bargaining agreement, as there is no evidence that any aspect of the administration of the health insurance plan itself is subject to the grievance procedure, or that it should be. It makes sense for the Employer to make some effort to use its contracting authority to insure that the Third Party Administrator has a policy of promptly reimbursing claims. Accordingly, I recommend that the agreement have the following provision:

"The Employer shall use its best efforts to have the Third Party Administrator of the health plan establish a policy of ordinarily reimbursing employees for reimbursable items within thirty (30) days of the date the claim is submitted."

Finally, there is some dispute as to the specific provisions which should be included in the Agreement incorporating health insurance. I have recommended the following which appears to meet the concerns of both parties:

"Poweshiek County shall subscribe to a hospitalization, major medical prescription drug and dental, and life insurance program as per present Board policy and practice. The benefits shall remain substantially equivalent to those in effect at the beginning of this agreement throughout the

term of this agreement. The Employer retains the right to select the insurance carrier(s), provided that the benefits are substantially equivalent to those provided for in this Agreement. The Employer shall notify the Union of any proposed change in benefits or carrier and, upon request of the Union, collectively bargain with respect to the proposed changes."

5. HOURS OF WORK

The parties also disagreed as to provisions specifying that the hours of work provision is not a guarantee of the number of hours or days. The Union's original proposed statement of this provision (first sentence of the article) is adequate for this purpose. The Employer's position that the provision is not a guarantee of pay conflicts with the salary structure of the agreement and is neither common, nor necessary. The crux of the parties' disagreement is whether the Sheriff's decision is subject to make changes is subject to the grievance procedure and, if so, under what standards the arbitrator would determine the grievance. The purpose of this language in the hours provision is to preserve the flexibility of the Sheriff to make changes in hours when he has a legitimate need to do so. By the same token, grievances on this subject can be costly and time consuming I conclude that the better view is to make issues subject to the grievance procedure, but subject to a very narrow standard of review. Accordingly, I recommend the following language on the subject:

"The parties agree that the above reflects the normal workday and work schedule. The Sheriff shall have the authority to make changes in the normal workday and work schedule which in his reasonable judgment are for the efficient operation of the Department."

The purpose of this proposal is to protect the right of the Sheriff to deal with the unforseen circumstances which might require a change and to permit an arbitrator to review that decision only on the narrow grounds that either a) it's real purpose was not the efficient administration of the Department or b) the judgment was not one which a sheriff reasonably might have made under similar circumstances. The narrow scope of review would permit an arbitrator to overturn the decision of the Sheriff where it was in bad faith or where it was an abuse of his authority.

6.. HOLIDAYS

The Union takes the position that the sole issue is whether compensatory time for holidays will be paid or only compensatory time off. It notes that prior to July 1, 2002, employees were free to chose between compensatory time off or pay. Shortly, after July, the Sheriff unilaterally changed this to only time off because he did not have money in the budget for pay. The Employer proposed to incorporate the change it made in July, 2002, into the agreement. I recommend that employees receive pay or compensatory time off in accordance with the recommendation which I made in the discussion of compensatory time above.

7. SICK LEAVE

Positions of the Parties

The Union supports it position with respect to the FMLA in a number of ways. It argues that the parties entered into a tentative agreement in which the Employer agreed to essentially the same terms as the Union is now proposing that employees, at their option to may elect to take sick leave, compensatory or vacation time, as part of the twelve week FMA leave. The Union concedes that it is common in collective bargaining for the parties to require employees to exhaust their sick leave for FMLA, but rare to require the use of other leaves.

As to the wellness benefit, the Union has made its proposal in its present form to make it a mandatory subject of bargaining. The Union's proposal is not worded in terms of receiving the benefit after reaching the maximum accumulation, but is phrased to run at the end of any year The Union argues that this was an established benefit and the Employer offered no reason to eliminate it.

The Employer takes the position that federal law allows it, at its option, to require employees to take accrued sick leave, compensatory or vacation time. It also argues that the Union has agreed to the same language as the Employer proposes herein in the highway unit.

As to the welleness benefit, the Employer argues that this is a benefit which is not supported in the comparisons. It argues that its financial condition requires that it eliminate this benefit.

Discussion

The burden of proof upon a party attempting to change a contract provision was noted above. The practice here prior to July, 2002, is shown in Exhibit 15. That practice had been in effect since at least July, 1990. The practice varied somewhat among different classifications. Sheriff's deputies had the choice of vacation time off or receive pay. Hourly employees were only permitted to take pay. The Employer unilaterally eliminated that benefit in July, 2002. The Union's offer is supported by comparison to other comparable counties. The Employer did not have any cash payment of sick leave upon retirement or similar benefit. Prior to July, 2002, the maximum accumulation of sick leave was 90 days. The parties have agreed to the increase adopted unilaterally by the Employer which increased the limit to 120 days which had been imposed in order to insure that no one would receive the cash wellness benefit.

While the Employer has shown changed circumstances in that its financial situation has deteriorated, it has not shown that its proposal is necessary.. The parties have reached an agreement by which the maximum accumulation of sick leave was increased from 90 to 120 days of sick leave. No one will be able to increase their accumulated sick leave from 90 to 120 days during the term of this agreement. While the Employer would like to totally eliminate the existing benefit because it is not commonly found elsewhere, it has not offered to adopt any of the other types of wellness benefits which are common elsewhere. It is likely that many employees have

worked to accumulate sick leave because of this benefit and they would be entitled to some consideration in any proposal which would change the benefit upon which they relied. I note that the Union's proposal is inconsistent with the existing benefit. Accordingly, I am recommending the adoption of the Union's approach, but at the existing benefit level with the 120 day maximum.

The FMLA was adopted to provide a minimum level of benefits in limited circumstances. There are situations in which its provisions could theoretically be abused, although it is not likely. The Employer's proposal, to the extent it requires the use of sick leave, prevents that abuse. The Employer's proposal with respect to requiring employees to use other leave time such as vacation, is onerous. There is no evidence it is necessary or that it would prevent abuse. Accordingly, I recommend that employees be required to exhaust sick leave, but not other leaves, before or while on FMLA.

8. WAGE RATE PROVISION LANGUAGE

The Union's proposal includes two provisions. The first provision is not really controverted and is adopted with a slight amendment for better phrasing. It states:

"Exhibit A, Job Classification and Salary Schedule, is hereby incorporated in this Agreement by reference as if fully set out herein.

The second proposal incorporates the current practice of bi-weekly pay periods. That provision is also not controverted. The last sentence provides for direct deposit of paychecks. The Employer does not have a direct deposit system for any of its employees. The proposal creates a number of risks for the Employer and employees. For example, it may require the Employer to bear unusual administrative costs. Further, rather than direct deposit to a single financial institution, the proposal requires that the Employer provide direct deposit to the individual employee's financial institution. This would require the Employer to administer frequent changes and carries with it substantial risks of administrative error resulting in employees' paychecks possibly being delayed. A provision of this nature is better left to voluntary bargaining under these circumstances. Accordingly, I omit that provision. The second sentence should read:

"Employees shall be paid every two weeks."

9. WAGE ADJUSTMENTS

Positions of the Parties

The Union notes that it has been the practice here since at least 1975 to pay journeyman deputies at 85% of the Sheriff's salary. The Union strongly desires to keep this benefit. For 27 years, the Employer has followed this practice. The Union questions why the Employer suddenly

is attempting to remove this benefit. It believes that this is an act of retaliation for employees having sought representation[2]. The Union acknowledges that deputies here are paid more than elsewhere, but it also notes that this Employer does not have Sergeants or Investigators. As a result, Sheriff Deputies here perform some duties which are ordinarily performed in other counties by higher paid employees. It argues that its offer of 2% is more than reasonable under the circumstances. The average settlement in the comparability group is 3.71% effective July 1, 2003. The Union argues that the Dispatch/Jailers and the Custodian are underpaid by comparison to the comparability group. The Union believes that its offer of 4% is more than reasonable. There is substantial evidence to support this increase. The proposed increase is equivalent to that received by employees in similar classifications in other counties. The Union indicated during the hearing that the jail administrator's current pay is $100 and that its proposal was made in error. It had intended to maintain his current rate. The jail administrator has received $100 since he began that work and the Employer has not shown any reason why this should be eliminated.

The Employer argues that by any comparison, Sheriff Deputies are receiving higher wages than those in comparable counties. They are the highest paid deputies in any reasonable grouping. It believes that no wage increase is appropriate for that classification. The Employer notes that the Union used Tama, Mahaska, and Iowa Counties. The Employer used some other counties which are more remote. The Employer listed Bremer because it was relatively close. If it had left it out, it would have made it look better. If Harrison, Bremer and Plymouth were not considered, the deputies would be getting approximately $1.39 per hour more than anyone else.

The Employer notes that the chief deputy here receives the same pay as other deputies. This is unusual. In most counties, the chief deputy receives more than other deputies. Further, the Sheriff here is underpaid by comparison to the same group because the Employer cannot afford to raise deputies' wages by 85% of the amount it would take to correct that imbalance. The contract should be put into line with the rest of the state.

The Employer does not deny that Dispatcher/Jailers and the Custodian should have a wage increase. The Employer at first challenged whether the deputy performing jail administration duties should not have been included in this unit. The Union responded that he did so little of those duties that he should be included in the unit. The Employer argues that the deputy wage rates are so high that this person really does not need the extra $100 per month.

Discussion

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[2]The Employer objects to the consideration of this issue and argues that the issue of unfair labor practice is solely for the Iowa Public Employment Relations Board. I ruled at hearing that unfair labor practice issues are matters that have traditionally been resolved by the parties in collective bargaining and, therefore, are properly considered for credibility and other reasons in fact finding proceedings. The Iowa Public Employment Relations Board, of course, has exclusive jurisdiction over the statutory issue itself.

Currently, the journeyman Deputy is paid at 85% of the Sheriff's wage, the maximum allowed by law. The Union strongly wishes to keep that method of determining wages. Section 331.904, Iowa Code, uses this method to set the maximum amount sheriff deputies can be paid and there are some comparable counties where a similar method has been used.

The better view is that the Sheriff's wage rate should be considered a factor, but not necessarily always the controlling factor for the establishment of deputy wage rates. This is true because collective bargaining substitutes a rational method of setting wages for unilateral employer control. The advantage of collective bargaining to both parties is that they are free to seek to make changes in compensation in a rational way. Thus, it would violate the hard won principle of collective bargaining to deny the Employer the right to seek rational changes The evidence in this case demonstrates that point. The Union has shown that there is a rational basis why the Employer established wages at 85% of the Sheriff's wages and, over time, made these deputies among the highest paid in the comparable counties in the state. Specifically, these deputies appear to perform a broader range of duties with more responsibility than comparable deputies. Nonetheless, over time the Sheriff's wage rate has fallen behind his peers while Deputies continue to be the highest paid. It is, therefore, conceivable that the Sheriff may at some time in the future receive a wage adjustment to catch his wages up to those of his peers. It would be counter-productive to interfere with that adjustment.

The correct view of collective bargaining statutes is that arbitrators and fact finders are authorized to consider the parties' historical method of setting wage rates as a factor in fact finding and arbitration. The preferred method of setting wage rates under Section 20.22(9), Iowa Code, is by comparison to the wage rates of comparable employees doing comparable work. Thus, while the percentage method can be considered, it still must result in a rate which is acceptable under this factor. That same provision does allow the consideration of "factors peculiar to the * * * classifications involved." Section 331.904, Iowa Code and the parties' history are factors peculiar to the classification involved. It also allows consideration of "other relevant factors." That provision would also allow consideration of the percentage method because it is used in some other counties. Section 20.22(9)a. allows consideration of past collective bargaining agreements and the bargaining which led to them. In first contract situations, that provision is properly construed to allow consideration of the existing pay practices of an employer. Accordingly, the percentage method is a factor which can and should be considered by this fact finder.

One of the "other factors" often considered by fact finders is circumstances in which the Employer grants inconsistent wage increases to supervisory employees. In this case, the Employer has granted the Sheriff a 2% general wage increase. This increase is a general increase and there is no evidence that this increase was granted to correct a wage inequity for the Sheriff. Accordingly, a 2% general increase for Deputies appears to have support under this consideration.

Deputies here are among the highest paid in the state in comparable counties, if not the

highest paid.. The Employer has severe financial difficulties and it appears that it does need some short term help with its finances. Given the wage leadership position of the Sheriff's, I have recommended that Sheriff's Deputies get a 2% wage increase, but that the wage increase should be delayed to January 1, 2004, resulting in a 1% cost saving for the Employer. This would also result in the Deputies' maintaining pace with the 85% of the current wage rate of the Sheriff.

By contrast, the Dispatcher/Jailers are under paid by comparison to other similar employees. The Employer is not in a financial position to grant a catch-up increase to these employees. They are entitled to a general increase.. It appears that a 4% increase is appropriate for this classification in order for them to even come close to keeping pace with those in comparable positions elsewhere. However, as the Employer is experiencing financial difficulties, it is recommended that this increase be effective October 1, 2003. This would assist the Employer with some cash savings.

The evidence with respect to the Custodian is that his or her wages are at least two dollars an hour less than every county offered by the Union as a comparable. This employee is a low paid employee and the impact of changes in the health insurance plan are likely to affect him or her more than the rest of the unit. The Union's proposal for a 4% increase effective July 1, 2003, for this position is appropriate.

The Deputy who serves as the jail administrator received an $100 per month task rate. The Employer proposes to eliminate this rate. The Employer asserts that the jail administration duties are less than 20% of the employee's work. The Employer has failed to show that these duties have changed over the years. Further, the fact that a deputy was paid a task rate suggests that the work requires skills beyond those of an ordinary deputy. The better view is that the Employer should compensate the one who is willing to take on the extra work. The Union has not shown any need to change the current practice. Accordingly, I recommend that the $100 task rate be retained.

RECOMMENDATIONS

1. Insurance.

a. The single premium equivalent increase be rolled back entirely

b. The family plan premium increase be rolled back from $50 to $25.

c. I recommend against the Employer's proposal that employees share any further in the increased premium equivalents.

d. add the following provision:

"The Employer shall use its best efforts to have the Third Party Administrator of the health plan

establish a policy of ordinarily reimbursing employees for reimbursable items within thirty (30) days of the date the claim is submitted."

e. add the following provision:

"Poweshiek County shall subscribe to a hospitalization, major medical prescription drug and dental, and life insurance program as per present Board policy and practice. The benefits shall remain substantially equivalent to those in effect at the beginning of this agreement throughout the term of this agreement. The Employer retains the right to select the insurance carrier(s), provided that the benefits are substantially equivalent to those provided for in this Agreement. The Employer shall notify the Union of any proposed change in benefits or carrier and, upon request of the Union, collectively bargain with respect to the proposed changes."

2. That the parties add the following language to that which they have previously agreed upon in Article 13, Hours of Work:

"The parties agree that the above reflects the normal workday and work schedule. The Sheriff shall have the authority to make changes in the normal workday and work schedule which in his reasonable judgment are for the efficient operation of the Department.

* * * *

Employees shall be paid, either in cash or compensatory time, * * * *

Each employee will be asked to indicate his choice of compensation time or overtime pay for compensation credit on his/her time sheet. An employee may accumulate and carry over up to 80 hours of compensatory time. The Sheriff, in his or her discretion, may for any calendar month require that all employees receive only compensatory time for overtime in that month. If the Sheriff does so require, employees will receive additional overtime at the rate of one hour for every twenty credited to their overtime account. Employees who accumulate 80 hours of overtime shall take any compensatory time earned above 80 hours by the end of the pay period or within 7 days, which ever is longer. For the purposes of compensatory time earned beyond 80, the Sheriff shall not unreasonably refuse to permit the employee to take any time as requested. Such refusal cannot be based solely upon the fact that the employee's taking the time would result in overtime for other employees. If the employee is denied his or her request to take the compensatory time at his or her option on two occasions during the pay period or 7 days, he or she will be paid at the rate of time and one-half for all such time.

F. That the deductible shall remain as the Employer established it on July 1, 2002.

3. Holidays, Article 16. That employees receive pay or time off at their election with the same restrictions specified for the Sheriff to restrict employees to compensatory time as specified in number 2 above.

4. Training Time: that training time be granted as compensatory time only.

5. Sick Leave:

a. That after employees have accumulated 120 days of sick leave, they will continue to accumulate sick leave. At the end of the year, one-half of the accumulated sick leave will be converted to vacation.

b. That employees be required to exhaust sick leave, but not other leaves before or while taking FMLA leave.

6. Wage Provisions:

a. include the following in the wage provision: "Exhibit A, Job Classification and Salary Schedule, is hereby incorporated in this Agreement by reference as if fully set out herein."

b. include the following: "Employees shall be paid every two weeks."

7. Wage Rates:

a. Increase Deputies by 2% effective January 1, 2004

b. Increase Dispatcher/Jailer rates by 4% effective October 1, 2003

c. Increase Custodian by 4% effective July 1, 2003

d. Pay Deputy performing jail administrator duties an additional stipend of $100 per month.

Dated at Milwaukee, Wisconsin this 18th day of April, 2002.

Stanley H. Michelstetter II
Fact Finder

CERTIFICATE OF SERVICE

I certify that on the 18th day of April, 2003, I served the foregoing Report of Fact Finder upon each of the parties to this matter by (_____ personally delivering) (__X__ mailing) a copy to them at their respective addresses as shown ~~below:~~ on the attachment which is incorporated by reference

I further certify that on the 18th day of April, 2003, I will submit this Report for filing by (_____ personally delivering) (__X__ mailing) it to the Iowa Public Employment Relations Board, 514 East Locust, Suite 202, Des Moines, IA 50309.

Stanley H. Nichols, Jr.
Fact-Finder
(Print name)

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